

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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MELISSA FUHRMANN and JEFFREY  
FUHRMANN,

Plaintiffs,

**ORDER**

12-CV-1361 (ADS)(ARL)

-against-

EAA INSPECTION SERVICES, INC., and  
ROBERT PARISI,

Defendants.

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**APPEARANCES:**

**Law Offices of Neil H. Greenberg & Associates**

*Attorneys for the plaintiffs*

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Westbury, NY 11590

By: Justin M. Reilly, Esq., Of Counsel

**Zabell & Associates, P.C.**

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By: Saul D. Zabell, Esq., Of Counsel

**SPATT, District Judge.**

On March 30, 2012, Plaintiffs Melissa Fuhrmann and Jeffrey Fuhrmann (“the Plaintiffs”) commenced this action against Defendants EAA Inspection Services, Inc., and Robert Parisi (“the Defendants”), alleging violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, the New York Labor Law (“NYLL”), sections 650 *et seq.*, including Part 142, section 142-2.2 (“Overtime Rate”) and section 142-2.4 (“Spread of Hours Pay”) of Title 12 of the Official Compilation of Codes, Rules and Regulations promulgated by the Commissioner of Labor pursuant to Minimum Wage Act (Article 19 of the New York State Labor Law). On

April 25, 2012, the Defendants moved pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Count III of the Plaintiffs' Complaint, which alleged violations of the NYLL for failure to pay "spread-of-hours" compensation. The Defendants argued that because the Plaintiffs admitted in their Complaint that their base rate of pay substantially and sufficiently exceeded the New York State minimum wage, the Plaintiffs' spread-of-hours claim should be dismissed as a matter-of-law.

By letter dated May 25, 2012, the Plaintiffs informed the Court that they consented to the dismissal of their spread-of-hours claim. In the letter, the Plaintiffs cited to the Court's decision in Sosnowy v. A. Perri Farms, Inc., 764 F. Supp. 2d 457 (E.D.N.Y. 2011), which held that "the spread-of-hours provision is properly limited to enhancing the compensation of those receiving only the minimum required by law." Id. at 474 (quoting Almeida v. Aguinaga, 500 F. Supp. 2d 366, 370 (S.D.N.Y. 2007)). Accordingly, the Court grants the Defendants' motion to dismiss Count III of the Plaintiffs' Complaint, asserting violations of the NYLL spread-of-hours provision.

**SO ORDERED.**

Dated: Central Islip, New York  
October 1, 2012

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge